

Memorandum 2001-75

**Statutes Made Obsolete by Trial Court Restructuring:
Subordinate Judicial Officers**

The statutes governing subordinate judicial officers need to be adjusted primarily to reflect trial court unification and the enactment of the Trial Court Employment Protection and Governance Act (TCEPGA). The changes required are relatively straightforward. An example is the statute governing probate commissioners, which the Commission has previously seen:

69897. ~~The Subject to Section 71622, the superior court of any county with a population of over 600,000 and under 900,000 may appoint a probate commissioner subordinate judicial officer to assist the probate court in disposing of its business connected with the administration of justice. The person appointed shall be designated as probate commissioner of such county. He shall be a citizen of the United States, a resident of this State and have been admitted to practice before the Supreme Court of this State. He shall hold office during the pleasure of the courts appointing him.~~

~~The appointment of the probate commissioner shall be made by order entered in the minutes of the court.~~

Every probate commissioner so appointed shall be in attendance at all sessions of the court. ~~He~~ The probate commissioner shall examine all the files and proceedings and advise the court on them. ~~He~~ The probate commissioner shall have the powers and duties delegated ~~to him~~ by the appointing court, including the powers conferred on court commissioners by this title or the Code of Civil Procedure.

Comment. Section 69897 is amended to repeal obsolete provisions. The obsolete provisions are superseded by Section 71622 (subordinate judicial officers).

We have circulated drafts to interested persons and organizations, and have received a handful of comments on them. This memorandum presents a few policy issues for Commission resolution, in anticipation of adding this material to the draft tentative recommendation.

General Authority to Appoint Subordinate Judicial Officers

The TCEPGA includes broad authority for the courts to appoint subordinate judicial officers.

71622. (a) Each trial court may establish and may appoint such subordinate judicial officers as are deemed necessary for the performance of subordinate judicial duties as are authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment of a subordinate judicial officer shall be made by order entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

This provision enables repeal of special statutes such as those authorizing appointment of court commissioners (Gov't Code §§ 70140-70148), traffic commissioners (Gov't Code § 72450), and juvenile referees (Welf. & Inst. Code § 247). A question has been raised as to why we would repeal the specific authority to appoint court commissioners, traffic commissioners, and juvenile referees but preserve the specific authority to appoint probate commissioners (set out above).

The staff draft preserves the probate commissioner appointment authority only because it provides some context for the other provisions of the section relating to duties of the probate commissioner. However, in light of the concern about a possible negative implication as to appointment authority for other

subordinate judicial officers, **the staff would simply delete the specific appointment authority for probate commissioners**, in reliance on Section 71622:

~~69897. The superior court of any county with a population of over 600,000 and under 900,000 may appoint a probate commissioner to assist the probate court in disposing of its business connected with the administration of justice. The person appointed shall be designated as probate commissioner of such county. He shall be a citizen of the United States, a resident of this State and have been admitted to practice before the Supreme Court of this State. He shall hold office during the pleasure of the courts appointing him.~~

~~The appointment of the probate commissioner shall be made by order entered in the minutes of the court.~~

~~Every subordinate judicial officer appointed as a probate commissioner so appointed shall be in attendance at all sessions of the court. He The probate commissioner shall examine all the files and proceedings and advise the court on them. He The probate commissioner shall have the powers and duties delegated to him by the appointing court, including the powers conferred on court commissioners by this title or the Code of Civil Procedure.~~

Comment. Section 69897 is amended to repeal obsolete provisions. The obsolete provisions are superseded by Section 71622 (subordinate judicial officers).

Child Support Commissioners

In our search of the statutes we have come across a special type of subordinate judicial officer known as a child support commissioner. The Family Code includes special provisions relating to child support commissioners, tied to federal requirements for Title IV-D child support cases.

The child court commissioner statute needs some adjustment for trial court restructuring, and should also be referenced by the TCEPGA provisions on subordinate judicial officers. **The staff would make the following revisions:**

Fam. Code § 4252 (amended). Appointment of child support commissioners and Judicial Council standards

~~4252. (a) One or more child support commissioners shall be appointed by the superior court~~ The superior court shall appoint one or more subordinate judicial officers as child support commissioners to perform the duties specified in Section 4251. The child support commissioners' first priority always shall be to hear Title IV-D child support cases. The child support commissioners shall specialize in hearing child support cases, and their primary responsibility shall be to hear Title IV-D child support cases. Child

~~support commissioner positions shall not be subject to the limitation on other commissioner positions imposed upon the counties by Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code. The Notwithstanding Section 71622 of the Government Code, the number of child support commissioner positions allotted to each superior court shall be determined by the Judicial Council in accordance with caseload standards developed pursuant to paragraph (3) of subdivision (b), subject to appropriations in the annual Budget Act.~~

(b) The Judicial Council shall do all of the following:

(1) Establish minimum qualifications for child support commissioners.

(2) Establish minimum educational and training requirements for child support commissioners and other court personnel that are assigned to Title IV-D child support cases. Training programs shall include both federal and state laws concerning child support and related issues.

(3) Establish caseload, case processing, and staffing standards for child support commissioners on or before April 1, 1997, which shall set forth the maximum number of cases that each child support commissioner can process. These standards shall be reviewed and, if appropriate, revised by the Judicial Council every two years.

(4) Adopt uniform rules of court and forms for use in Title IV-D child support cases.

(5) Offer technical assistance to ~~counties~~ courts regarding issues relating to implementation and operation of the child support commissioner system, including assistance related to funding, staffing, and the sharing of resources between ~~counties~~ courts.

(6) Establish procedures for the distribution of funding to the courts for child support commissioners, family law facilitators pursuant to Division 14 (commencing with Section 10000), and related allowable costs.

(7) Adopt rules that define the exceptional circumstances in which judges may hear Title IV-D child support matters as provided in subdivision (a) of Section 4251.

~~(8) Convene a workgroup, including representatives of the State Department of Social Services, county district attorneys, child support commissioners, child support advocates, family law facilitators, attorneys engaging in the private practice of family law, custodial and noncustodial parents' organizations, and staff of the Assembly and Senate Judiciary Committees, to advise the Judicial Council in establishing criteria to evaluate the success and identify any failures of the child support commissioner system. The workgroup shall also provide advice on how to establish successful outcomes for the child support commissioner system created~~

~~pursuant to this article. The Judicial Council shall conduct an evaluation and report the results of the evaluation and its recommendations to the Legislature no later than February 1, 2000. At a minimum, the evaluation shall examine the ability of the child support commissioner system to achieve the goals set forth in Section 4250. The report shall include a fiscal impact statement estimating the costs of implementing the recommendations.~~

(9) (8) Undertake other actions as appropriate to ensure the successful implementation and operation of child support commissioners in the counties.

Comment. Section 4252 is amended to reflect enactment of the Trial Court Employment Protection and Governance Act. See Gov't Code § 71622 (subordinate judicial officers).

The section is also amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of trial court operations).

The section is also amended to delete the reference in subdivision (a) to former Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code.

The section is also amended to delete former subdivision (b)(8) as obsolete.

Gov't Code § 71601 (amended). Definitions

71601. For purposes of this chapter, the following definitions shall apply:

...

(i) "Subordinate judicial officer" means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, **child support commissioner**, referee, traffic trial commissioner, traffic referee, traffic hearing officer, juvenile referee, and pro-tem judge juvenile hearing officer.

...

Comment. Subdivision (i) of Section 71601 is amended to refer to types of subordinate judicial officers. See Fam. Code §§ 4250-4253 (child support commissioners); former Gov't Code §§ 72408 (traffic hearing officer in Santa Barbara County), 72450 (traffic trial commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers). Subdivision (i) is also amended to eliminate the implication that a commissioner serving as a temporary judge acts under auspices of Article 1, Section 22, of the California Constitution (subordinate judicial officers). The authority of a temporary judge is derived from Article 1, Section 21, of the California Constitution (temporary judges). See also Code Civ. Proc. § 259(e) (powers of court

commissioners); Fam. Code § 4251(b) (powers of child support
commissioners).

Respectfully submitted,

Nathaniel Sterling
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